

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal by the State of Michigan and others from the Court of Appeals, Whitbeck, C.J., and
Owens and Schuette, J.J., Affirming the Antrim County Circuit Court

SHERRY COMBEN, ANTRIM COUNTY
TREASURER,

Plaintiff-Appellee,

Michigan Supreme Court #127212

-vs-

Court of Appeals #248963

STATE OF MICHIGAN, JAY B. RISING,
in his capacity as STATE TREASURER OF
MICHIGAN, and THE MICHIGAN
DEPARTMENT OF TREASURY,

Antrim County Circuit Court
#02-7860-PS

Defendants-Appellants,

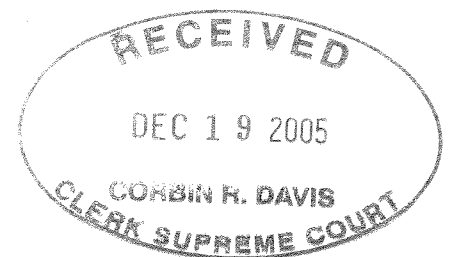
and

PURE RESOURCES, L.P., DOMINION RESERVES,
INC., WOLVERINE GAS & OIL COMPANY, INC.,
EUGENIE R. ANDERSON, STEPHEN WARD DEVINE,
ELIZABETH PALMER DEVINE WISEMAN, MICHAEL
EDMUND DEVINE, SUZANNE LEE DEVINE, WILLIAM
W. DUNN, DAVID W. FAY, EDWIN R. FAY, PETER W.
FAY, ROBERT A. FAY, ROSAMOND S. FISHER,
FREDERICK T. GOLDING, NANCY HAMILTON, LISA
MARRIOTT JONES, DAPHNE FAY LANDRY, GEORGE
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MARJORIE S. RICHARDSON, JAMES W. RILEY, JR.,
WILLIAM A. RILEY, BARBARA F. ROSENBERG,
ELIZABETH R.P. SHAW, ANN WARD SPAETH,
FREDERICK S. STRONG III, ROBERT A. W. STRONG,
Revocable Trust, EUGENIE S. KAUFFMAN,

Defendants-Appellees.

BRIEF OF MICHIGAN
UNITED CONSERVATION
CLUBS AND THE OTHER
PERSONS LISTED ON
THE FOLLOWING
PAGES, AMICI CURIAE

ORAL ARGUMENT NOT
REQUESTED



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Dated: December 16, 2005

MICHIGAN UNITED CONSERVATION CLUBS
HEART OF THE LAKES CENTER FOR LAND CONSERVATION POLICY
MICHIGAN ENVIRONMENTAL COUNCIL
MICHIGAN RECREATION AND PARK ASSOCIATION
MICHIGAN MUNICIPAL LEAGUE
NATIONAL WILDLIFE FEDERATION
MICHIGAN COUNCIL OF TROUT UNLIMITED
THE NATURE CONSERVANCY
THE HONORABLE WILLIAM G. MILLIKEN
THE LEAGUE OF MICHIGAN BICYCLISTS
MICHIGAN ASSOCIATION OF COUNTY PARKS AND RECREATION OFFICIALS
MICHIGAN DIVISION OF THE IZAAC WALTON LEAGUE OF AMERICA
MICHIGAN MOUNTAIN BIKING ASSOCIATION
MICHIGAN RESOURCE STEWARDS
MICHIGAN STATE UNITED COON HUNTERS ASSOCIATION
MICHIGAN TOWNSHIPS ASSOCIATION
MICHIGAN TRAILS & GREENWAYS ALLIANCE
RAILS-TO-TRAILS CONSERVANCY
WEST MICHIGAN ENVIRONMENTAL ACTION COUNCIL
EATON COUNTY PARKS AND RECREATION COMMISISON
GENESEE COUNTY PARKS AND RECREATION COMMISSION
INGHAM COUNTY PARKS DEPARTMENT
KENT COUNTY
OAKLAND COUNTY PARKS AND RECREATION COMMISSION
OTTAWA COUNTY
ST. CLAIR COUNTY PARKS AND RECREATION COMMISISON
WASHTENAW COUNTY PARKS AND RECREATION COMMISSION
WAYNE COUNTY PARKS DIVISION
CITY OF BANGOR
CITY OF COLDWATER
CITY OF EAST LANSING
CITY OF FREMONT
CITY OF HASTINGS
LANSING PARKS BOARD
CITY OF PETOSKEY
CITY OF PORTAGE PARK BOARD
THE CITY OF SALINE
CITY OF ST. CLAIR
ADA TOWNSHIP
ADA TOWNSHIP OPEN SPACE PRESERVATION ADVISORY BOARD
COMSTOCK CHARTER TOWNSHIP PARKS AND RECREATION COMMISSION
DELTA TOWNSHIP PARKS, RECREATION AND CEMETERIES COMMISSION
GRANT TOWNSHIP
INDEPENDENCE TOWNSHIP PARKS AND RECREATION
MERIDIAN TOWNSHIP PARK COMMISSION
CHARTER TOWNSHIP OF OAKLAND PARKS AND RECREATION COMMISSION
ORION TOWNSHIP PARKS & RECREATION
OXFORD TOWNSHIP PARKS AND RECREATION COMMISSION

PLAINFIELD CHARTER TOWNSHIP
HOUGHTON KEWEENAW CONSERVATION DISTRICT
PAINT CREEK TRAILWAYS COMMISSION
COPPER COUNTRY AUDUBON CLUB
CARO AREA TRAILS SYSTEM
DWIGHT LYDELL CHAPTER OF THE IZAAC WALTON LEAGUE
FRIENDS OF THE DETROIT RIVER
FRIENDS OF EATON COUNTY PARKS
FRIENDS OF FRED MEIJER HEARTLAND TRAIL
FRIENDS OF WALKER HIGHLAND TRAILS
FRIENDS OF THE WHITE PINE TRAIL
GRATIOT LAKE CONSERVANCY
GROSSE ILE NATURE AND LAND CONSERVANCY
KEWEENAW LAND TRUST
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STATEMENT CONCERNING APPELLATE JURISDICTION

The *Amici* accept and adopt the State Appellants' Jurisdictional Statement.

STATEMENT OF QUESTIONS INVOLVED

The *Amici* accept and adopt the State Appellants' Statement of Questions Involved.

STATEMENT OF PROCEEDINGS AND FACTS

The Amici accept and adopt the State Appellants' Statement of Proceedings and Facts and their description of Michigan's tax foreclosure process.

In addition, they emphasize or add the following:

On October 27, 2005, this Court granted leave to appeal the August 31, 2004, judgment of the Court of Appeals. In its order the Court granted Michigan United Conservation Clubs ("MUCC"), *et al.*'s motion to file brief *amicus curiae*. The *Amici*'s interests in this matter are described in their motion of February 27, 2005, which they will not repeated here except to summarize that the *Amici* are more than 90 individuals, counties, cities, townships, other governmental entities, conservation organizations, open space advocacy organizations, planning societies, landscape architects, and others, including former Governor William G. Milliken, who are concerned that the judgment of the Court of Appeals in the Comben case could prove disastrous for the Natural Resources Trust Fund.

Defendant State of Michigan and the other Appellants ask in this appeal that the Court reverse the trial court and the Court of Appeals and declare that severed oil and gas rights are subject to taxation and foreclosure under the General Property Tax Act, 1893 PA 206, MCL 211.1, *et seq.* ("GTPA"); that taxes paid under the Severance Tax Act, 1929 PA 48, MCL 205.301, *et seq.*, on oil and gas removed from the ground are not in lieu of *ad valorem* real property taxes on severed oil and gas rights; and that the notice provisions of 1999 PA 123 do not violate the due process rights of owners of severed oil and gas rights.

Under Art. 9, §35, of the Michigan Constitution of 1963, bonuses, rentals, delayed rentals, and royalties collected or reserved by the State under the provisions of leases for the extraction of nonrenewable resources from State owned lands, except such revenues accruing under leases of State owned lands acquired with money from State or federal game and fish protection funds or revenues accruing from lands purchased with such revenues, are paid to the Natural Resources Trust Fund ("NRTF"). Section 35 directs both the accumulation of principal in the NRTF and payment of part of the annual revenue from bonuses, rentals, delayed rentals, and royalties to the State Parks

Endowment Fund. (Mich.Const. 1963, Art. 9, §35a.) It also provides that the “interest and earnings of the trust fund shall be expended for the acquisition of land or rights in land for recreational uses or protection of the land because of its environmental importance or its scenic beauty, for the development of public recreation facilities,” and for administration of the trust fund itself.

On pp. 3-4 of their Application for Leave to Appeal the State Appellants said:

“Since 1909 each state agency entrusted with the management or sale of tax-reverted lands has complied with certain legislative mandates and reserved oil and gas rights when selling tax-reverted lands. The state presently holds mineral and surface rights in 3.8 million acres of land and mineral rights, only, in another 2.1 million acres of land, the vast majority of which were obtained by tax foreclosure. There is a class action presently pending in the Antrim County Circuit Court joined with a Court of Claims action, in which plaintiffs seek to quiet title to all severed oil and gas rights acquired by the state by tax foreclosure, along with damages for royalty payments, bonuses and rentals received by the state from tax-reverted severed oil and gas interests. *Black Stone Minerals Co, LP v. Michigan*, Antrim County Circuit Court no. 03-7933-CZ, joined with Court of Claims no. 03-56-MZ. [Footnote omitted.] Since most state-owned tax reverted lands were acquired prior to this Court’s decision in *Dow v. Michigan*, 396 Mich 192; 240 NW2d 450 (1976), and no titlework in tax-delinquent parcels was required (or acquired) prior to *Dow*, the state has no way of presently identifying the extent of its oil and gas rights that were severed prior to being obtained by tax foreclosure. Thus, the state cannot quantify its exposure as a result of the Court of Appeals ruling, but it is presumed that the exposure is very significant.”

The United States in 1836 negotiated a treaty with Indian tribes by which it acquired title to the Northern part of the Lower Peninsula and the Eastern part of the Upper Peninsula of Michigan. It then surveyed and sold (or gave) the land to the State of Michigan, which was admitted to the Union in 1837, and directly to private persons. *People v Le Blanc*, 399 Mich. 31; 248 NW2d 199 (1976). Michigan, in turn, sold most of the land acquired from the United States to private persons. Although the Southern part of the cession and earlier cessions to the South of it developed into farms, towns, and cities, the Northern part of the State was a vast pine forest. It was subjected in the second half of the 19th Century to devastating deforestation as lumber towns sprang up overnight, the forests were clearcut, and the towns just as quickly melted away and disappeared, leaving a sea of pine stumps and silted-up rivers. Because the land was now worthless to the lumber companies, they sold it (often reserving mineral rights), if they could, to would-be farmers or, if they couldn’t, just abandoned it and stopped paying the taxes on it. Some of the land was

suitable for farming, but a lot of it was not. In three great waves of misery connected with three sharp recessions or depressions precipitated by financial panics (1893; 1907 followed by 1910 - 11; 1929 and through the 1930s) the farms failed. When the farmers could not pay their taxes, their lands tax-reverted. At first, the State followed a policy of reselling these lands, usually under terms in which the State reserved minerals including oil and gas rights, but finally, at least by the time of the Progressive Era in the early 20th Century, both the federal and State governments began to retain some of the tax-reverted lands (some of which had been foreclosed several times), grouped them into what are now our great State and national forests in Michigan, and began the process of reforestation and undoing the damage done by the logging era. Special Bulletin 332, April, 1945, The Land Nobody Wanted, Titus, Michigan State College, Agricultural Experiment Station, *et al.* Significantly, the tax-reversions during the Great Depression followed the passage of the Severance Tax Act in 1929. This means that, because of the opinions of the trial court and the Court of Appeals in this case, the oil and gas rights the State thought it acquired in the very large numbers of Depression era tax-reversions, which often were severed, are now under a cloud.

On pp. 10-11 of its Application for Leave the State said, "The revenue to the state from oil and gas activities since 1927 has exceeded \$1 billion. The revenue to the state from oil and gas activities from 1992-2002 averaged in excess of \$33 million, annually."

In a brief dated May 19, 2004, filed in the Antrim County Circuit Court class action, Plaintiff Pure Resources, L.P. ("Pure"), in support of its Motion to Amend Class Certification Order, sought an order requiring the State to pay for all or part of the costs of giving notice to absent class members. These costs were believed by Pure to be substantial. In this regard, Pure said on p. 3 of its brief:

"Pure consulted with prominent landmen, attorneys specializing in oil and gas titles, and the owner of an abstract and title company whose work is exclusively devoted to petroleum abstracting and mineral searches in Michigan, Illinois, and the Appalachian basin.

"The consensus of these experts was that a large number of the remaining severed oil & gas owners could be discovered by qualified landmen searching all records in register of deeds offices in the 83 counties as well as the records of the MDEQ, Geological Survey Division. The cost would be over \$500,000 and as high as \$750,000 dollars.

“Another option would be to blanket all counties with a published notice. The results of such a publication would be, in the area of \$100,000 per each publication day.”

On p. 12 Pure asked the lower court to “require the State, amply endowed in its Trust Fund (not the General Fund), with oil and gas monies from leased lands,” to pay for the cost of determining “where the State title conflicts with that of the severed oil & gas rights owners.”

Although the lower court did not require the State to pay any of the costs of publication, Pure’s motion signals where the class action plaintiff is headed if the courts continue to recognize its claims.

ARGUMENT

I. Overview of the Dispute.

Apparently because of constitutional concerns regarding the procedures of 1999 PA 123, 211.78-.78p, as they relate to notice of tax forfeitures and foreclosures to owners of severed oil and gas interests, the Court of Appeals adopted a strained, internally inconsistent, and textually confused reading of the General Property Tax Act, 1893 PA 206, MCL 211.1, *et seq.* (“GTPA”), and the Severance Tax Act, 1929 PA 48, MCL 205.301, *et seq.*

The constitutional concerns, voiced as *obiter dicta*, by the trial court in its opinion dated April 10, 2003, Part II, pp. 16, *et seq.* (the opinion is in the State’s Appendix at pp. __-__, hereinafter App. ____), found due process and takings objections to procedures adopted by the Legislature that were intended to follow closely this Court’s decision in *Dow v. Michigan*, 396 Mich 192, 240 NW2d 450 (1976). Although the trial court admitted, Op., 4/10/03, p. 17, App., ____, that the Legislature had intended to satisfy *Dow*’s due process requirements in amending the GPTA in 1999, the trial court nevertheless ruled that the legislation had failed to provide due process protection to owners of severed oil and gas interests. In so ruling, the trial court cited no due process case authority other than *Dow*. The main problem with the trial court’s due process analysis is that it ignores the fact that foreclosures of severed oil and gas interests don’t occur under 1999 PA 123 without notice to the owners of such interests and an opportunity to be heard. See MCL 211.78i; and see, also, this Court’s recent opinion in Republic Bank v. Genesee County Treasurer,

471 Mich. 732; 690 NW2d 917 (2005). If the taxes are owed, the owners of severed interests can pay them and seek contribution from other estate holders. Curry v. Lake Superior Iron Co., 190 Mich. 445; 157 N.W. 19 (1916); In Re Petition of Auditor General, 260 Mich. 578; 245 N.W. 522 (1932); Hammond v. Auditor General, 70 Mich.App. 149; 245 N.W.2d 544 (1976).

The trial judge apparently was uncomfortable with this approach. His reaction appears to have arisen from his incorrect belief that severed (but undeveloped) oil and gas interests are not subject to *ad valorem* property taxation, perhaps inherently, but also certainly (he believed) because they are statutorily exempt. This same reaction also appears to underlie his takings rulings, which are arguably just an artifact created by his mistaken belief that undeveloped, severed oil and gas interests are exempt from the GPTA. Op., 4/10/03, pp. 19-23; App. _____. (The trial court's takings analysis is dependant on the conclusion that severed oil and gas rights are not subject to the GPTA. If they are subject to the GPTA, and if the owner of them gets notice of foreclosure, an opportunity to be heard, and a right of redemption, there is no more a taking when these rights are foreclosed for failure to pay taxes than there is when the surface owner's land is foreclosed for failure to pay taxes.) The judge emphasized the "fugitive nature of oil and gas." Op., 4/10/03, p. 10; App. _____. Oil and gas, he ruled, Op., 4/10/03, p. 11; App. _____, are not "valuable deposits known to be available" and therefore included in "cash value" under GPTA, §27, "[b]ecause of their unique nature...[They] are only known to be available when a well is drilled and they are actually severed from the land." Id. Also, "the fair market value of oil and gas interests is nearly impossible to ascertain unless oil and gas are actually produced." Id., at p. 19; App. _____. His rulings show sympathy for the plight of the Atrium County Treasurer, who felt that following the procedures of 1999 PA 123 might expose the County to liability if those procedures were later ruled unconstitutional. We note that this liability, if any, was assumed by the County when it elected to become the foreclosing governmental unit (FGU) under Act 123. Be that as it may, the trial court's opinion lifted a relatively minor exposure from the shoulders of the County and, as we will show, placed a possibly overwhelming burden on the shoulders of the State and its people.

The judge's statements about the difficulty of valuing oil or gas in the ground are at odds with technological and financial reality. For example, major energy companies, the shares of which are listed and traded on the New York Stock Exchange and other major stock exchanges, regularly publish financial statements which include oil and gas reserves, and the statement of such reserves is subject to financial accounting standards. In short, in-the-ground oil and gas reserves are regularly measured, valued, and subjected to sale or other similar transactions. The valuation of such reserves is not an exact science, of course, any more than is the valuation of commercial real estate, but, similarly, neither is inherently incapable of being valued for *ad valorem* taxation or other purposes. For the history of one large oil company's travails after substantially overstating its reserves, go to www.shell.com and click on Investor Centre, then proved reserve information—archive of announcements. (Accessed November 30, 2005.)

Without reserves (that is without oil or gas to put through its system), an energy company is just a collection of metal derricks, pipes, pumps, pipelines, tankers, refineries, tanker trucks, and so forth - just a lot of rusty metal, so to speak. An oil company derives its value primarily from its reserves. Not only does the market value those reserves every time a share of its stock changes hands, but also occasionally one of these oil companies acquires another oil company or some of its reserves, as in the cases of Exxon - Mobil and Chevron - Texaco. During this case, in fact, Black Stone Minerals Co., LP, acquired interests of Pure for \$190 million in cash.¹

The Court of Appeals' reading of the GPTA and the Severance Tax Act concludes that the severance tax is in lieu of *ad valorem* real property taxes. This ruling "potentially invalidates the state's acquisition and reservation of severed oil and gas rights since the 1932 foreclosure of delinquent 1929 taxes." State's Application for Leave to Appeal, p. 11. In fact, the Court of Appeals' ruling is inconsistent with more than 70 years of Michigan history. As the State points out

¹"The hours stretched on. Keller was still waiting, reflecting on the risks of his [\$13.2 billion cash] offer, when the phone rang. It was Jimmy Lee. He tried to sound nonchalant. 'Hello, George', he said. He paused. 'You just bought yourself an oil company.'" *The Prize*, Simon & Schuster, 1991, p. 739, by Daniel Yergin, winner of the Pulitzer Prize and an excellent history of the oil industry. The quote is discussing Chevron's bid for Gulf in the mid - 1980s.

on p. 46 of its Application for Leave to Appeal, “In 1909 the Legislature authorized, and in 1913 mandated, the reservation of oil and gas when the state sells tax-reverted lands. The Legislature thus recognized that oil and gas interests were foreclosed under the GPTA. In 1929 the severance tax was enacted. Yet in 1938 the Legislature mandated the reservation of oil and gas rights upon sale of lands that reverted after 1938. The Legislature understood that oil and gas rights were subject to taxation and foreclosure even after the adoption of the severance tax act.” The trial court, on p. 9 of its Opinion of 4/10/04; App. ___, found that the question presented was one of first impression. But how could a question of such importance go unanswered for more than 70 years after passage of the Severance Tax Act? *Amici curiae* think the explanation lies in the fact that the trial court and Court of Appeals seriously misread the GPTA and the Severance Tax Act. Until they did, no one seriously read the two statutes as the Court of Appeals now does. The State has convincingly shown that the GPTA, an *ad valorem* property tax, applies to oil and gas in the ground, whereas the Severance Tax Act, an excise tax on the act of separating the oil and gas from the ground, applies to oil or gas severed from the ground to the exclusion of “all other taxes” on the oil or gas severed from the ground, for example, personal property taxes. The Court of Appeals’ overly expansive reading of the Severance Tax Act flies in the face of the careful legislative balance in the two statutes, which applies the Severance Tax Act just at the moment (extraction of oil or gas from the ground) when the GPTA no longer applies. It is this mistake that threatens the NRTF and more.

Although we hope the courts will recognize ultimately that the owner of a severed oil and gas interest must exercise some diligence in watching out for his or her interest, and although we also hope that statutes of limitations, laches, waiver, estoppel, adverse possession, Dormant Mineral Act extinction, and non-retroactivity defenses will greatly reduce the State’s exposure by barring stale claims, the class plaintiffs apparently assert the novel claim that the right of redemption never expires until the owners of the severed interest receive notice of it.² This is

² Antrim County’s March 8, 2005, brief in opposition to the *Amici*’s motion to file brief *amicus curiae*, page 10, expressly asserts this claim.

asserted by the Plaintiffs regardless of how open the State's claim of a conflicting interest may have been. If this position prevails, it is easy to see that the State's exposure is not time limited and may be enormous, easily large enough to destroy the NRTF.

It also could have a profound and adverse impact on State management of State lands. For example, suppose the owner of a foreclosed severed claim insists on redemption instead of damages. In that event, we could see private interests springing back up in areas presumed until now to be State owned and controlled. This could mean oil and gas wells in areas now off limits to drilling such as the Jordan River valley, the Sand Lakes Quiet Area, etc., and possibly even private in-holdings in sensitive areas of State Parks.

Just the thought of trying to sort through the available records to find and resolve all of the potential claims is mind-numbing. One experienced DNR staffer has quipped, only half in jest, that the work could occupy all of the time of the entire DNR staff the rest of their working lives. Compare Republic Bank, *supra*, 471 Mich. at 741.

II. The History and Structure of NRTF.

NRTF originated as the "Kammer Recreational Land Trust Fund of 1976," 1976 PA 204. Funding derived from royalties on the sale and lease of State-owned mineral rights. This represented a far-seeing compromise spearheaded by Amicus MUCC when oil was discovered in the Pigeon River State Forest in which some oil and gas development was allowed under strict controls as long as the public derived a permanent benefit (a natural resources endowment fund, if you will) from the sale of this non-renewable public resource. See WMEAC V NRC, 405 Mich 741; 275 NW2d 538, cert den, 444 US 941 (1979). The idea was that Michigan would not permit another round of "cut and run" resource misuse but would instead use this public resource to enhance permanently the State's natural resource base. In 1984 the voters amended the State Constitution to give constitutional protection to NRFT. Article 9, Section 35, of the Michigan Constitution of 1963, was proposed by 1984 House Joint Resolution M and was ratified by the voters as Ballot Proposal B at the general election held on November 6, 1984. Section 35 was amended in 1994. The 1994 amendment was proposed by 1994 Senate Joint Resolution E which

was ratified at the November 8, 1994, general election as Ballot Proposal P. The 1994 amendment changed the provision so that Trust Fund revenues could no longer be diverted to the Michigan Strategic Fund and created the State Park Endowment Fund. Section 35 was amended again on August 6, 2002, with the approval by the voters of Proposal 2.

As amended, Section 35 establishes a Michigan Natural resources Trust Fund (NRTF) consisting of all bonuses, rentals, delayed rentals, and royalties collected or reserved by the State under the provisions of leases for extraction of non-renewable resources of State-owned lands, subject to one exception. The NRTF is authorized to receive appropriations. The funds must be invested as provided by law. Until accumulated principal reaches \$500 million, \$10 million of the annual revenues must be deposited in the Michigan State Parks Endowment Fund which is the subject of Article 9, Section 35a, of the 1963 Constitution. This last requirement is subject to a 50% cap such that, until the Trust Fund reaches an accumulated principal of \$500 million, in any state fiscal year, not more than 50% of the total revenues are to be deposited into the Michigan State Parks Endowment Fund.

When the NRTF reaches \$500 million, the annual revenues that would have gone to NRTF are to be deposited in the Michigan State Parks Endowment Fund until that fund reaches an accumulated principal of \$800 million. When that goal has been achieved, all revenues covered by Section 35 are to be “distributed as provided by law.”

Section 35 provides that, “The interest and earnings of the trust fund shall be expended for the acquisition of land or rights in land for recreational uses or protection of the land because of its environmental importance or its scenic beauty, for the development of public recreational facilities, and for the administration of the trust fund...” The Legislature is required to provide that a portion of the cost of a project funded by a grant from the fund be provided by the local unit of government or public authority.

Section 35 also provides that until the trust fund reaches an accumulated principal of \$500 million, the Legislature may provide, in addition to the expenditure of interest and earnings authorized by Section 35, that a portion, not to exceed 33 1/3%, of the revenues received by the

trust fund during each State fiscal year, may be expended during subsequent State fiscal years for the purposes of the constitutional provision. Also, not less than 25% of the total amounts made available for expenditure from the trust fund from any State fiscal year may be expended for the acquisition of land and rights in land and not more than 25% for development of public recreation facilities.

The Legislature is required to provide by law for the establishment of a trust fund board within the Department of Natural Resources. The board's purpose is to recommend projects to be funded in order of priority. The board submits its recommendations to the Governor, which in turn submits the board's recommendations to the Legislature for an appropriations bill.

The Legislature is required to provide by law for the implementation of Section 35.

The Michigan Legislature has in fact done so in Part 19 of the Natural Resources and Environmental Protection Act, MCL 324.101, et seq.; MCL 324.1901, et seq. In Section 1902 a trust fund is established in the State Treasury. It consists of all bonuses, rentals, delayed rentals, and royalties collected or reserved by the State under the provisions of leases for the extraction of non-renewable resources from State-owned lands, subject to several listed exceptions. The same section contains provisions mirroring Section 35 regarding the allocation of annual revenues covered by the fund during the period of time in which principal is accumulating in either the NRTF or the State Parks Endowment Fund. The statute establishes an investment standard and also requires the preparation of an annual report.

Section 1905 deals with the composition of the Natural Resources Trust Fund board which consists of five members. The members include the Director of the DNR or a member of its commission, as determined by the commission, and four residents of the State to be appointed by the Governor with the advice and consent of the Senate. These citizen members serve for staggered terms of four years.

Under Section 1907 the board determines which lands and rights in land within the State should be acquired and which public recreational facilities should be developed with money from the trust fund. The board submits to the Legislature in January of each year a list of those lands and

rights in land and those public recreational facilities that the board has determined should be acquired or developed with trust fund money.

The NRTF has been in place since 1976 providing assistance to local governments and the MDNR itself to buy lands for outdoor recreation and the protection of natural resources and open space. It also helps fund the appropriate development of land for public outdoor recreation. MDNR's website has extensive information on the NRTF. To access it, go to www.michigan.gov/dnr, click on Inside DNR; click on Grants; scroll to bottom of page, click on Michigan Natural Resources Trust Fund Projects to Date (accessed November 3, 2005), which gives a list of projects by county, including multi-county projects, totaling grants of about \$540,000,000. In fact, as of January, 2004, over \$600,000,000 in NRTF appropriations have been made for more than 1,200 State and local recreation projects. Because of legal limits on the amount of NRTF revenues available for appropriation each year for use for development, the majority of the funding is allocated for acquisition projects. As of fiscal year 2003 about \$20,000,000 of funding was available per year. These funds are allocated to projects of immense value to the people of the State of Michigan.

According to NRTF's 2004 annual report, a copy of which is included in *Amici's* Appendix A, as of September 30, 2004 (the end of fiscal year 2004), NRTF's total corpus investment balance was \$241,741,253. Total oil and gas revenue for the year was \$50,963,108. One third of the revenue (\$16,987,703) plus the State parks Endowment Fund transfer (\$10,000,000.00) totaled \$26,987,703, leaving \$23,975,405 to be transferred to the NRTF principal balance. This amount is reflected in the total corpus investment balance given above for the fiscal year ending September 30, 2004.

Recent acquisition projects include land acquisitions adjacent to or within existing State parks and recreation areas, purchase of development rights on 1880 acres, including 2.7 miles of Lake Michigan coastline and 320 acres of Critical Dunes, near Arcadia, acquisition of conservation easements on about 390,000 acres of working forest land, acquisition of large industrial forest (ca 6,200 acres), as well as 624 acres with 6300 feet of frontage on the St. Mary's River and a nearby

bay, wetland acquisitions in Southern Michigan, acquisition of 500 acres and 2300 feet on Elk Lake and two miles of Battle Creek in Grand Traverse County, acquisition of 95 acres and 2000 feet of Grand River frontage in Ottawa County for a future county park, and acquisition of 16 acres of natural land and 530 feet of frontage on Lake Huron in St. Clair County.

As large as the fund seems, in reality it is small compared to the need to protect critical lands for environmental protection, habitat protection, and outdoor recreation. Urban sprawl and other development pressures continue to consume at an alarming rate Michigan's Great Lakes coastline, inland lakes and streams shoreline, wetlands, forests, and farms. Michigan can ill-afford to lose all or any substantial part of this source of funding for these programs.

Although \$20,000,000 to \$30,000,000 a year to spend on projects of this sort may seem like a lot of money, in fact it isn't. First, there is the matter of demand vastly exceeding supply. During 2003, more than 200 applications requesting more than \$126,000,000 in assistance were evaluated and scored by NRTF staff. In 2004, demand was at least \$110,000,000. Next, NRTF is competing with developers and others for key parcels. For this reason and others, significant land cost inflation is occurring. The Fund is seeing today increasing numbers of projects in the \$10,000,000 to \$15,000,000 range and sometimes even higher. Although land costs are rising sharply, the Fund itself has remained relatively static in its ability to generate funds for acquisitions. This has forced NRTF to consider "multi-year projects," which are like IOUs requiring applicants to develop holding strategies. Multi-year projects pre-commit available resources for future years and, therefore, reduce the amount available for new projects. A recently retired NRTF board member estimates that the Fund's purchasing power grew at the rate of only 1.82 % per year in the last 10 years. This was during a period of sharp cost inflation. See Amici's Appendix, Funding Strategic Projects by the Issuance of Bonds Secured by Oil and Gas Lease Revenues, dated June 20, 2004. (Due to lack of published data on land cost inflation, the author of Appendix B fell back on the growth in SEV. This probably significantly understates land cost inflation, especially for choice waterfront parcels.) It is also important to note that the resource base of the fund is declining. Although oil and gas prices remain high, thus masking the impact of depletion, oil production in

Michigan is declining at the rate of about 7% per year and gas production at the rate of 5% per year. Needless to say, an adverse court ruling that significantly cut into the amount annually available for acquisitions could leave the NRTF unable to meet its existing commitments and, therefore, paralyzed with respect to funding new projects. An effort to pass legislation authorizing the NRTF to issue revenue bonds was recently shelved because of the adverse impact it was believed the Comben case would have on the bond market. In all these many ways and more, Comben is a threat to the NRTF.

CONCLUSION AND RELIEF REQUESTED

Amici Curiae respectfully ask the Court to grant the relief requested by the State.

Perhaps it would be helpful if Amici summarized how this case got so far off the tracks and what the Court can do to limit the damage that has been done.

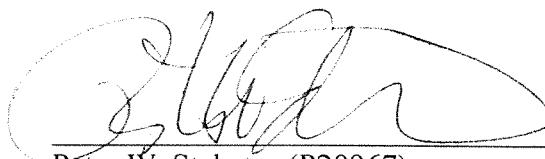
The trial court and the Court of Appeals opened a Pandora's Box of horrors when they ruled that severed, but undeveloped oil and gas rights are not subject to the GPTA. To limit or undo the damage this Court is urged to correct this clear error and to rule that the Severance Tax Act is not in lieu of ad valorem property taxes on oil and gas in the ground. (It is in lieu of personal property taxes on oil and gas severed from the ground.)

Next this Court is urged to reject clearly the trial court's ruling that, because of the fugitive nature of oil and gas, it is inherently not subject to ad valorem real property taxation. The Court of Appeals's decision is confused and inconsistent on this issue and will create endless problems unless it is corrected.

Thirdly, the Court is urged to reject the illogical Dormant Minerals Act 1963 PA 42, MCL 554.291, et seq, argument adopted by both of the lower courts in this case. The purpose of the Dormant Mineral Act is to clear up titles in Michigan by merging severed mineral rights with the fee if the owner of the severed rights does nothing over a very long period of time (20 years) to indicate any interest in developing them. His act to protect his interest can be as modest as to file a notice every 20 years in the register of deeds office. The act solves problems like these: X, the owner of Blackacre, sells the real estate to Y. His lawyer advises him to reserve mineral rights in

the deed, and he does. Years later, no oil or gas boom having occurred, X forgets about the reservation. Near the end of his life he makes out a will but includes no specific provisions for the reserved mineral rights. Without anyone realizing it, they pass under the residue clause of his will, and after many years they lateral out through estate after estate into the unsuspecting hands of countless, unknown heirs. We believe situations like this are common. The Dormant Minerals Act gets rid of problems like this by cleaning away these stale, old claims. In doing so it encourages the development of oil and gas resources in Michigan, of course, but the act has nothing to do with real property taxation and, specifically, has no bearing on the first two issues we have urged the Court to resolve.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. Steketee', is written over a horizontal line.

Peter W. Steketee (P20967)

Attorney for *Amici Curiae*, Michigan United
Conservation Clubs, *et al.*

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Dated: December 16, 2005

**2004
Michigan Natural Resources
Trust Fund
(MNRTF)
Annual Report**



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Grants, Contracts and Customer Systems**

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MICHIGAN NATURAL RESOURCES TRUST FUND

ANNUAL REPORT FOR 2004

Lansing, Michigan

January 2005

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MICHIGAN NATURAL RESOURCES TRUST FUND

2004 ANNUAL REPORT

I. INTRODUCTION

This document is submitted in compliance with Section 1906(2) of the Michigan Natural Resources Trust Fund (MNRTF) Act, Part 19 of the Natural Resources and Environmental Protection Act, 451 PA 1994 (Act 451), as amended. Part 19 of Act 451 requires that by January 16 of each year, an Annual Report be submitted to the Governor and Legislature detailing the operations of the MNRTF Board of Trustees for the preceding one-year period. The report provides a summary of the activities of the MNRTF Board and Program for calendar year 2004, including projects recommended for funding and program revenues and expenditures.

II. HISTORY OF THE MICHIGAN NATURAL RESOURCES TRUST FUND

The MNRTF began as the "Kammer Recreational Land Trust Fund Act of 1976" via PA 204 of 1976. Act 204 created the Michigan Land Trust Fund (MLTF) program to provide a source of funding for the public acquisition of lands for resource protection and public outdoor recreation. Funding was derived from royalties on the sale and lease of State-owned mineral rights.

On November 6, 1984, Michigan residents voted in favor of Proposal B, which amended the State Constitution and created the MNRTF. The constitutional amendment required that oil, gas, and other mineral lease and royalty payments be placed into the Trust Fund, with proceeds used to both acquire and develop public recreation lands. To implement the constitutional amendment, the Legislature passed the Michigan Natural Resources Trust Fund Act of 1985 (PA 101 of 1985). This act stipulated that in any one fiscal year up to a third of all mineral lease revenues, plus the interest and earnings of the Trust Fund, could be used to both purchase land for resource protection and public outdoor recreation and develop outdoor recreation facilities.

Act 101 of 1985 also specified that not less than 25 percent of the total expenditures from the Trust Fund in any fiscal year shall be expended for land acquisition and rights in land, and not more than 25 percent of the total expenditures from the Trust Fund in any fiscal year be expended for development of public recreation facilities. In addition, Act 101 authorized the use of Trust Funds to make the annual payments in-lieu of taxes to local units of government that are required under subpart 14 of Part 21 of the Natural Resources and Environmental Protection Act, 451 PA 1994, as amended. Trust Funds are used to meet the DNR's obligations under Part 21 for lands acquired by the DNR with MNRTF assistance.

On November 8, 1994, Michigan voters approved Proposal P, which also amended the State Constitution. The 1994 amendment reversed a previous constitutional provision which allowed the diversion of Trust Fund revenue to the Michigan Strategic Fund. Proposal P also established the State Park Endowment Fund for the operation, maintenance and capital improvements at Michigan's State Parks, and provided for the distribution of \$10 million annually in Trust Fund revenues to the new Endowment Fund. The 1994 amendment also raised the maximum amount that can accumulate in the Trust Fund from \$200 million to \$400 million.

On August 6, 2002, Michigan residents approved Proposal 2. This amendment to Article IX allows the MNRTF to invest in a wider array of investments, raises the current cap on the maximum allowable amount from \$400 million to \$500 million, and allows up to one-third of the Trust Fund revenues to be spent annually, until the principal reaches \$500 million.

III. BOARD MEMBERSHIP

The Board of Trustees created by the MNRTF Act is composed of five members. These members are the Director of the Department of Natural Resources (DNR) or a member of the Natural Resources Commission, as determined by the Natural Resources Commission, and four residents of the State appointed by the Governor.

The four citizen members appointed by the Governor and serving their terms during 2004 were:

Mr. Steven Arwood from St. Johns, for a term expiring October 1, 2005; Mr. David Dempsey from Lansing, for a term expiring October 1, 2007; Mr. Jim Thompson from Reed City, for a term expiring October 1, 2004; and Mr. Sam Washington from West Bloomfield, for a term expiring October 1, 2006. The Natural Resources Commission was represented by Commissioner Bob Garner from Cadillac. Mr. Thompson served as Chairperson through 2004.

IV. BOARD ACTIVITIES AND ACHIEVEMENTS IN 2004

The Trust Fund Board met six times in 2004 to conduct business. They also held a retreat June 2nd and 3rd in Lansing with the public invited to attend, to discuss scoring criteria and other related issues. An evening meeting was held on December 7th in Lansing to provide an opportunity to discuss the list of recommended projects. The following is a summary of their actions:

Allocation of Project Funds

Section 1907(1) of Part 19, PA 451 of 1994, requires that by January of each year the Board submit to the Legislature a priority list of lands recommended for acquisition and/or development.

Applications for MNRTF assistance are accepted annually. Applications are accepted from both local units of government and State agencies, primarily the land managing divisions of the Department of Natural Resources (DNR). Applications are reviewed and scored by Grants, Contracts and Customer Systems (GCACS) of the DNR. Final grant recommendations are made by the MNRTF Board and submitted to the Legislature for approval and appropriation of funds.

The 2004 Recreation Grants Selection Process booklet which explains the program and application requirements was made available to prospective applicants in January 2004. Applications for MNRTF land acquisition and recreation facility development projects were accepted from the DNR and local units of government on April 1, 2004. A secondary application deadline for acquisition and development applications was available on August 1, 2004.

DNR's GCACS staff review applications for eligibility and conformance to the stated program goals and evaluation criteria. For applications received in April, GCACS staff conducted a preliminary evaluation and made the results available to applicants before the final scoring process was conducted. Also for applications received in April and August, GCACS staff conducted a site visit of certain sites to verify conditions described in the application.

During 2004, over 150 MNRTF applications requesting more than \$111 million in assistance were evaluated and scored by GCACS staff based on criteria and a scoring model approved by the Board. The staff rankings for acquisition and development projects were submitted to the Board in December. These rankings were based on application scores and the funds available. The Board considered staff recommendations and other appropriate factors in making its recommendations.

At its December 8, 2004 meeting, the Board officially adopted its 2004 project recommendations for land acquisition and development projects for submission to the Legislature. The list included the following projects, subject to legislative approval and appropriation of funds:

- 15 acquisition grants totaling \$26.0 million - 7 local acquisition grants totaling \$9.1 million and 8 State acquisition grants totaling \$16.8 million.
- 26 development grants totaling \$6.1 million - 24 local development grants totaling \$5.6 million and 2 State development grants totaling \$511,000.

Upon the request of the Department of Management and Budget (DMB), the Board's recommendations were submitted to DMB for inclusion in a 2005 supplemental appropriations bill.

The list of approved acquisition projects in priority order are provided below:

PROJECT NO.	APPLICANT	PROJECT COUNTY	PROJECT TITLE	PROJECT DESCRIPTION	GRANT AMOUNT
TF04-124	DNR	Various	Kamehameha Schools Land Project-Phase III	Purchase of a working forest conservation easement allowing continued timbering and public access for approximately 390,000 acres. Phase three of three	\$3,000,000
TF04-125	DNR	Manistee and Benzie	CMS Arcadia/Green Point Dunes-Phase II	Purchase of development rights on approximately 1,800 acres of dunes and forest land on Lake Michigan. Includes 2.7 miles of coastline, 320 acres of critical dunes for protection and public access. Second of three phases	\$4,500,000
TF04-129	DNR	Iron	Brule/Menominee River Corridor Initiative	Acquisition of 606 acres and two miles of frontage on the Brule and Menominee Rivers for wildlife habitat and wildlife corridors.	\$1,000,000
TF04-131	DNR	Various	Winter Deeryard Consolidation Initiative	Acquisition of winter deeryards parcels adjacent to State forest lands to protect critical deer habitat.	\$2,000,000
TF04-108	OTTAWA COUNTY	Ottawa	North Ottawa Dune Acquisition	Acquisition of 500 acres, including 304 acres of critical and barrier dunes which contain several endangered species to provide scenic viewing opportunities of the Lake Michigan shoreline and opportunities for active and passive recreation.	\$3,900,000
TF04-133	DNR	Cheboygan	Lee Grande Ranch Conservation Easement-Phase I	Purchase of a conservation easement on 2,560 acres almost entirely surrounded by State Forest land. Property contains excellent wildlife habitat and hunting opportunities. First of two phases	\$2,750,000
TF04-143	DNR	Various	Wildlife Area Lump Sum	Acquisition of inholdings in State Game and Wildlife Areas in southern Michigan and in wildlife project areas in various northern lower peninsula counties to provide wildlife habitat protection and public recreation opportunities.	\$1,000,000
TF04-105	SAUGATUCK	Allegan	Denison South Acquisition-Phase I	Acquisition of 161 acres of high quality natural dune land and wetlands with 3,650 feet of Lake Michigan frontage, 1,600 feet of Kalamazoo River frontage and 4,452 feet of Oxbow Lake frontage. Site includes populations of at least four rare species. First of three phases	\$3,566,700

TF04-141	DNR	Various	Various Park Acquisitions	Acquisition of key parcels of land that are within or immediately adjacent to existing State Parks and Recreation Area boundaries.	\$2,000,000
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PROJECT NO.	APPLICANT	PROJECT COUNTY	PROJECT TITLE	PROJECT DESCRIPTION	GRANT AMOUNT
TF04-047	CLINTON COUNTY	Clinton	Searles Property Acquisition	Acquisition of 42 acres, including a 28-acre lake, for water-based outdoor recreation development. Facility will provide the first County Park in Clinton County.	\$419,700
TF04-181	DNR	Leelanau	Lighthouse West Property/Leelanau State Park	Purchase of a conservation easement allowing public access and limited hunting on 42 acres and 640 feet of Lake Michigan shoreline in Leelanau Township. Project will protect essential bird migratory stopover habitat at the tip of the Leelanau Peninsula and will protect rare habitats.	\$630,000
TF04-168	ST. CLAIR TOWNSHIP	St. Clair	Greig Park Expansion	Acquisition of seven acres of land adjacent to Greig Park for passive outdoor recreation.	\$100,000
TF04-104	GRANT TOWNSHIP	Keweenaw	Hunter's Point Acquisition	Acquisition of 9.4 acres with 4,800 feet of Lake Superior shoreline to ensure continued access to the recreation trail and shoreline.	\$562,900
TF04-166	ANTRIM COUNTY	Antrim	Waterfront Additions to Grass River Natural Area	Acquire two parcels with mature forested wetlands adjacent to the existing Grass River Natural Area boundaries.	\$100,000
TF04-020	SOUTHERN LINKS TRAILWAY MANAGEMENT COUNCIL	Tuscola	Southern Links Trailway	Acquisition of 115 acres or 10.2 miles of former railroad right-of-way with 2,000 feet of frontage on Holloway Reservoir for future development of a nonmotorized recreational trail from the Village of Millington to the Village of Columbiaville.	\$500,000

The list of approved development projects in priority order are provided below:

PROJECT NO.	APPLICANT	PROJECT COUNTY	PROJECT TITLE	PROJECT DESCRIPTION	GRANT AMOUNT
TF04-077	FORSYTH TOWNSHIP	Marquette	Peter Nordeen Park Improvements	Development of pedestrian trails and a pedestrian bridge across the east branch of the Escanaba River, canoe launch, fishing piers, pavilion, playground, site lighting, landscaping and gazebo renovation.	\$425,600

TF04-078	LANSING	Ingham	River Trail South Extension	Development of a 10-foot wide asphalt trail to include a 14-foot wide boardwalk and site amenities which will provide 8,100 linear feet of access to Sycamore Creek.	\$500,000
TF04-102	CHOCOLAY TOWNSHIP	Marquette	Chocolay River Water Trail Access Site	Development of a water trail access site on the Chocolay River, including kayak locker, tent platforms, boardwalk through wetlands and a fishing platform.	\$18,300
TF04-134	DNR	Luce, Baraga and Presque Isle	State Forest Campground Improvements	Improvements to three rustic State Forest campgrounds with universally accessible facilities, including toilets, wells, registration stations, picnic tables, fire rings, access routes and other campsite upgrades.	\$250,000
TF04-089	MARQUETTE COUNTY	Marquette	Sugar Loaf Mountain Enhancements	Upgrade existing trail and stair system to provide improved access to Sugar Loaf Mountain and scenic viewing opportunities of Lake Superior.	\$59,200
TF04-003	OAKLAND COUNTY	Oakland	Organizational Youth Camp-Connector Trail	Project will develop a hard-surface trail within the headwaters area of the Clinton River within Independence Oaks Park, connecting the youth camp to existing trails.	\$219,000
TF04-121	EAST LANSING	Ingham	Northern Tier Trail	Development of a 5,000 linear foot, 10-foot wide asphalt trail. This project extends the 3.5-mile Northern Tier Trail system from the East Lansing Soccer Complex to State Road.	\$92,400
TF04-171	HOLLAND	Ottawa	Heinz Waterfront Walkway	Development of 2,000 linear feet of paved walkways and boardwalk, which will provide 1,700 linear feet of access to Lake Macatawa and include six overlook/fishing decks, seating areas, lighting, shoreline protection and landscaping.	\$500,000
TF04-057	WATERVLIET	Berrien	Hays Park Project	Waterfront improvements along the Paw Paw River to include a fishing pier and canoe launch. A skateboard park will also be developed.	\$42,300

PROJECT NO.	APPLICANT	PROJECT COUNTY	PROJECT TITLE	PROJECT DESCRIPTION	GRANT AMOUNT
TF04-034	FLUSHING TOWNSHIP	Genesee	Flushing Township Nature Park Improvements	Development of a 1,900 linear foot boardwalk, which will provide access to the Flint River and 20 acres of wetlands. The project will also include three fishing piers, interpretive signage, a native plant garden and water service lines.	\$131,600
TF04-115	ST. CLAIR COUNTY INTERMEDIATE SCHOOL DISTRICT	St. Clair County	Pine River Nature Center Trail Development	Development of a barrier-free trail and pedestrian bridge linking the Pine River Nature Center to Goodells County Park.	\$360,500
TF04-112	SOUTHFIELD	Oakland	Carpenter Lake Park Development and Lake Restoration	Project will develop a new public fishing and park site, including the restoration of the six-acre Carpenter Lake, wetlands enhancement, barrier-free trail, fishing dock and parking.	\$500,000
TF04-087	ALMA	Gratiot	Riverwalk Extension Project	Develop the city's fourth phase of a riverwalk along the Pine River. This phase is approximately 1,925 feet of lighted concrete walkway with site amenities and overlook decks for viewing and fishing.	\$288,800
TF04-007	IONIA COUNTY	Ionia	Green View Point Park Improvements	Development of a stairway, overlook deck, restroom building, landscaping, site furniture, water pump, signage, parking and a pedestrian bridge at Greenview Point Park located adjacent to the Grand River.	\$144,700
TF04-170	BANGOR	Van Buren	Black River Heritage Trail and Boardwalk Project	Development of a linear trail and park system with 2,700 feet of frontage along the Black River, including canoe/kayak launch, trail and boardwalk, scenic overlooks, skateboard park and nature plantings.	\$252,800
TF04-025	MUSKEGON	Muskegon	Muskegon Lakeshore Trail	Development of a two-mile, 12-foot wide, nonmotorized bituminous pathway, boardwalk, bridge and three fishing decks, which will provide access to Muskegon Lake.	\$500,000
TF04-056	SHERIDAN	Montcalm	Pearl Lake Park	Development of a pavilion, playground, fishing dock and site amenities at Pearl Lake Park.	\$74,000
TF04-081	GREENVILLE	Montcalm	Fred Meijer Flat River Trail	Development of 0.9 miles of bituminous trail which will provide 4,752 feet of frontage on the Flat River and will include a fishing deck, lighting and site amenities.	\$168,500

TF04-059	SARANAC	Ionia	Riverwalk Park	Development of a 1,900-foot, 10-foot wide bituminous trail which will provide 1,450 feet of access to the Grand River, as well as a picnic shelter and site amenities.	\$59,500
TF04-147	DAVISON TOWNSHIP	Genesee	Davison Township Trail	Development of an 8-foot wide, 5,800 linear foot asphalt trail and boardwalk which will provide 3,500 feet of access to the Black Creek and connect Davison Township to the existing trail system in the City of Davison.	\$266,400
TF04-086	CASPIAN	Iron	Apple Blossom Trail Extension	Extend the Apple Blossom Trail 5,500 linear feet along Baker Creek to the Caspian city limit.	\$134,900
TF04-005	YORK TOWNSHIP	Washtenaw	Sandra Richardson Park Development	Development of a new picnic pavilion, walking trail extension, upgrade existing trail and restroom, gazebo, arbor, picnic equipment and landscaping.	\$58,600
TF04-044	DETROIT	Wayne	In Town Youth Camp at Rouge Park	Development of a youth camp site with new restrooms, nature trail, bird and butterfly observation areas, picnic areas and renovation of picnic shelter.	\$407,000
TF04-176	DETROIT	Wayne	Dequindre Cut Greenway Improvements	Construction of a one-mile, 20-foot wide recreational walking and biking trail in the abandoned Dequindre Cut railway, connecting the Eastern Market District and surrounding neighborhoods.	\$393,000
TF04-040	RICHLAND TOWNSHIP	Ogemaw	Hardwood Lake Campground Improvements	Development will include electrical upgrades, pathways, fishing platform, and picnic tables at the campground on Hardwood Lake.	\$32,600
TF04-180	DNR	Washtenaw	Cedar Creek Outdoor Center Development	Construction of a shower building at Cedar Lake Outdoor Center at Waterloo Recreation Area.	\$261,000

MNRTF Nominations:

While only State and local governments may apply to the MNRTF to acquire property, any individual, group, or organization may nominate land for consideration. A nomination is a suggestion that the DNR consider a property for acquisition. Individuals wanting to submit a nomination must complete a short form.

Nominations are compiled by the DNR's GCACS and provided to the land managing bureaus/divisions of the DNR (Wildlife; Forest, Mineral and Fire Management; Parks and Recreation; and Fisheries) for reviews and to determine if the bureau/division wants to submit a MNRTF grant application for the property. Only those nominations which a DNR bureau/division decides to submit as an application are considered for funding, however, the MNRTF Board is provided a list of all nominations received.

Nominations may be submitted at any time, however, a list of the nominations received as of January 1, 2004 was provided to the Board at their April 2004 meeting. This gave the Board the opportunity to make note of properties of interest.

A total of six nominations were received in 2004, one of which were determined by the Department to be of high enough priority to be submitted as a Trust Fund application by one of the DNR's land managing bureaus/divisions. This project was not included in the Board's final project recommendations and approved for funding by the Legislature.

V. 2004 PROJECT EXPENDITURES

Expenditures made from the Trust Fund for calendar year 2004 for MNRTF grants and projects are provided in the lists in Appendix A. There are four separate lists: Local Government Acquisitions, Local Government Development Projects, State Acquisitions, and State Development Projects. These lists provide the following information:

- **Project Number**
- **Grant or Project Name**
- **Grantee Name:** The grant recipient for local projects.
- **Grant or Project Amount:** The local grant or DNR project amount approved by the MNRTF Board.
- **2004 Expenditures:** Expenditures made toward completing the project in 2004. For local acquisitions, this includes the grant or project amount plus additional costs directly associated with the project, such as DNR review and approval of local land appraisals. For recently approved acquisitions, if the expenditures listed are small and a large balance remains, the costs incurred in 2004 are those associated with appraisal of the property. The actual acquisition was not completed in calendar year 2004.
- **Balance:** Project or grant funds remaining taking into account the 2004 expenditures and all prior year expenditures.
- **2004 Acres:** For local and State acquisitions, if the property was acquired in 2004, or reported to the GCACS as a completed acquisition in 2004, the acres acquired is provided. If this column is blank, either the property was acquired in a prior year and any reported expenditures represent final close out costs (such as final payment to the grantee upon completion of a file audit) or the land has not been acquired. For lands not yet acquired, reported expenditures represent appraisal-related costs.

These 2004 expenditures represent only a part of the total project or grant amount, since costs are incurred over several fiscal years. These figures do not include local match expenditures for grants to local units of government.

VI. MICHIGAN NATURAL RESOURCES TRUST FUND FINANCIAL SUMMARY

During FY2004 (10/1/03 through 9/30/04), \$50,963,108 in revenue was generated from mineral royalties, largely oil and gas, collected under Part 19 of Act 451. The Act provides for up to one-third of those dollars - \$16,987,703 - to be appropriated and \$10 million to be transferred to the State Park Endowment Fund. The remaining revenues are deposited into an interest-bearing principal account. A deposit of \$23,975,405 will be made to the principal balance, bringing the principal balance at the close of FY2004 to \$241,741,253. Interest earned on the uninvested principal balance in FY2004 totaled \$397,866.

The interest earnings and investment income, plus one-third of the mineral revenues, are available for MNRTF projects and program administration. Administrative expenses for FY2004 totaled \$3,460,040.75. These costs include management of the minerals program within the Forest, Mineral and Fire Management Division, support for grants and acquisition staff in GCACS and Office of Land and Facilities and Department of Information Technology. The payments to local governments for in-lieu of taxes on State-owned lands purchased under the MNRTF program since 1987 are also included among the administrative costs.

Project and grant award recommendations made in calendar year 2004 were based on projected funds available for grants and DNR projects during FY2004 as described below:

Project Funds Available	Explanation
\$26,943,084	One-third of the mineral (largely oil and gas) revenue and interest as described above. These funds were split between acquisition (80 percent, less administrative costs) and development (20 percent). While the Board is authorized to spend up to 25 percent on development, due to the large number of exceptional acquisition opportunities in 2004, the Board opted to allocate 20 percent for development and 80 percent for acquisition.
\$0	Prior Year Revenue/Interest Adjustments. In most years, the Board's project recommendations are made prior to book closing for the fiscal year. Revenue and interest adjustments continue to be made until the fiscal year is closed. As such, there can be small adjustments that must be made in the following fiscal year.
\$26,943,084	Total Project Funds Available - Acquisition: \$25,052,287 which includes \$5,250,000 - Recovery from State Fair*; Development: \$6,140,797
\$0	Year End Adjustment carried into Fiscal Year 2004

The above revenue and expenditure figures are current as of September 30, 2004.

* Funds were received from the sale of land purchased by the MNRTF for the State Fair after it was transferred to the Department of Agriculture.

GRANT AND PROJECT EXPENDITURES FOR 2004

LOCAL GOVERNMENT ACQUISITION

TF #	GRANT NAME	GRANTEE	GRANT AMOUNT	2004 EXPENDITURES *	BALANCE	2004 ACRES
Act 291 of 2000						
99-384	Escanaba Riverfront Property Acquisition	City of Escanaba	102,750	102,750	0	12.26
			102,750	102,750	0	12.26
Act 81 of 2001						
00-065	Purchase of Bakers Field	Port Huron Township	375,000	35,421	0	
00-223	Wharfside Building Acquisition	City of Charlevoix	500,000	43,779	0	.08
00-328	Millennium Park Land Acquisition	Kent County	1,110,200	375	111,020	
			1,985,200	79,575	111,020	.08
Act 120 of 2001						
01-078	Millennium Park Acquisition II	Kent County	3,390,000	500	2,427,186	
01-115	Clinton River Trail Acquisition	City of Pontiac	412,160	25,860	0	
			3,802,160	26,360	2,427,186	.00
Act 746 of 2002						
02-013	Lost Lake Park Acquisition	Oakland Township	1,762,800	1,621,461	0	31.22
02-019	Township Park Expansion	Kochville Township	63,800	63,742	0	36.07
02-026	Resort Bluffs	Emmet County	869,400	869,712	0	5.37
02-028	Riverside Park Acquisition	City of Evart	288,400	288,400	0	28.00
02-083	Elk View Acquisition	City of Gaylord	112,000	108,803	0	2.08
02-128	Houghmaster Property	Alpena Township	1,392,900	1,384,141	0	133.00
02-133	Flat River Trail Acquisitions	City of Greenville	35,100	2,250	32,850	
02-148	Berberian Property Acquisition	City of Southfield	1,753,500	1,753,500	0	16.22
02-220	Boardman Nature Education Reserve Expansion	Garfield Township	505,000	2,250	502,750	
			6,782,900	6,094,259	535,600	251.90

GRANT AND PROJECT EXPENDITURES FOR 2004

LOCAL GOVERNMENT ACQUISITION

			GRANT	2004		
TF #	GRANT NAME	GRANTEE	AMOUNT	EXPENDITURES *	BALANCE	ACRES
Act 173 of 2003						
02-166	Macomb Orchard Trail Acquisition	Macomb County	1,718,300	1,750	1,716,550	
02-211	Waterfront Land Acquisition	City of Houghton	390,000	378,375	0	1.90
			2,108,300	80,128	1,716,550	1.90
Total Expenditures and Acres			\$ 14,781,310	\$ 6,683,069	\$ 4,793,612	266.17

* Includes employee charges associated with acquisition closing.

GRANT EXPENDITURES FOR 2004

LOCAL GOVERNMENT DEVELOPMENT

TF #	GRANT NAME	GRANTEE	GRANT AMOUNT	2004 EXPENDITURES	BALANCE
Act 265 of 1999					
99-075	Betsie Valley Trail	Benzie County	254,263	25,426	0
99-209	Swain's Lake Park	Jackson County	88,750	8,875	0
			343,013	34,301	0
Act 291 of 2000					
99-016	Curtiss Park Improvements	City of Saline	99,470	9,947	0
99-184	Trenton Linked River Park Improvements	City of Trenton	187,925	7,506	0
99-193	Ott Preserve Improvements	Calhoun County	231,962	23,196	0
99-196	Lillie Park Restoration/Redevelopment	Pittsfield Township	219,724	21,972	0
99-262	Rockport Picnic Fishing Pier	Alpena Township	50,300	5,030	0
99-266	Paint River Walk	City of Crystal Falls	167,090	16,709	0
99-401	Betsie Valley Trail	Benzie County	432,000	48,950	0
			1,388,471	133,310	0
Act 506 of 2000					
00-016	Southwest Lakeshore Development	City of Wakefield	136,000	9,836	0
00-024	Pine River Nature Center	St. Clair Intermediate School District	370,000	37,000	0
00-058	Millennium Park Facilities Development	Kent County	50,000	50,000	0
00-146	Grayling Fish Interpretive Center	Crawford County	327,796	28,278	0
			883,796	125,114	0

GRANT AND PROJECT EXPENDITURES FOR 2004

LOCAL GOVERNMENT DEVELOPMENT

TF #	GRANT NAME	GRANTEE	GRANT AMOUNT	2004 EXPENDITURES	BALANCE
Act 81 of 2001					
00-059	Pickereel Lake Trail Addition	Kent County	240,500	113,891	126,609
00-069	Fishing Access Boardwalks	Huron-Clinton Metropolitan Authority	180,000	124,468	0
00-092	New City Park Development	City of Auburn Hills	235,000	109,130	0
00-106	Westside Riverfront Park Development	City of Saginaw	256,153	226,440	29,713
00-155	River Bend Park Improvements	City of Croswell	82,240	8,224	0
00-172	Kollen Park Renovation	City of Holland	500,000	50,000	0
00-185	Ludington Park Beachhouse Renovation	City of Escanaba	192,500	38,147	0
00-188	Deerfield Hills Development Project	Deerfield Township	31,220	3,122	0
00-194	Stoffer Plaza Redevelopment	City of Albion	55,500	55,500	0
00-275	Harbor Breakwall Walkway Extension	City of Alpena	153,481	7,773	0
00-311	Bear Creek Park Development	Oakland Township	313,302	31,330	0
00-329	North-South Park Boardwalk	City of Gladwin	139,889	125,900	13,989
00-339	Lillie Park South and East Development	Pittsfield Township	386,720	49,504	0
00-354	Bay County Wetlands Improvements	Bay County	88,226	60,921	0
00-367	Lakeview Park Development	City of Portage	200,000	26,589	0
			3,054,731	1,030,939	170,311

Act 120 of 2001

01-008	American Legion Park	City of St. Ignace	160,600	16,060	0
01-011	Hays Park Improvements	City of Watervliet	70,000	580	0
01-022	Independence Oaks Youth Camp	Oakland County	163,200	99,061	0
01-024	Hartrick Park Development	Meridian Township	488,125	383,668	0
01-029	Camp Petosega Campground Development	Emmet County	107,600	10,760	0
01-040	Buell Lake Park Improvement	Genesee County	152,529	152,529	0

GRANT EXPENDITURES FOR 2004

LOCAL GOVERNMENT DEVELOPMENT

TF #	GRANT NAME	GRANTEE	GRANT AMOUNT	2004 EXPENDITURES	BALANCE
01-041	Lake Erie Metropark Hike-Bike/Shoreline Trail	Huron-Clinton Metropolitan Authority	199,800	179,820	19,980
01-062	McQuisten Park Boardwalk	Munising Township	174,640	5,105	0
01-087	Bay County Trail Improvements	Bay County	22,000	18,117	0
01-092	Community Park Development	Village of Saranac	165,470	16,547	0
01-128	Hersey Multi-Use Park	Village of Hersey	163,800	109,960	0
01-134	Shiawassee River District Trails	City of Linden	125,000	104,363	0
01-139	Belding Pathway	City of Belding	211,640	21,164	0
01-142	East Twin Lake Beach/Park/Boat Ramp Improvements	Albert Township	50,718	5,072	0
01-158	Rosy Mound Improvements	Ottawa County	500,000	334,536	0
01-159	Pigeon River Greenway Improvements	Ottawa County	471,000	194,133	0
01-165	Big Rapids Riverwalk	City of Big Rapids	493,300	41,242	49,330
01-166	Gen's Parks Improvement Project	East Bay Township	121,360	7,493	0
01-179	Kent Trails-Grandville Extension	City of Grandville	471,500	210,966	123,873
01-187	Chippewa River Restoration Project	City of Mt. Pleasant	500,000	61,247	0
01-188	2001 Recreation Area Improvements	Village of Lake Linden	26,000	26,000	0
01-192	Blue Lake Park Renovations	Muskegon County	115,200	11,520	0
			4,953,482	2,009,942	193,183
Act 173 of 2003					
02-062	Pioneer County Park	Muskegon County	224,000	22,768	201,232
02-064	Bicentennial Park Improvements	Mt. Morris Township	36,600	5,779	30,822
02-077	Point Au Gres Park Improvements	Arenac County	274,600	58,148	189,252
02-139	Regional Park Trailways	City of Davison	307,700	31,670	276,030
02-163	Big Rapids Riverwalk Development	City of Big Rapids	490,000	38,082	451,918
			1,332,900	156,446	1,149,254
Total Expenditures			\$ 11,956,393	\$ 3,490,054	\$ 1,512,747

PROJECT EXPENDITURES FOR 2004

STATE ACQUISITION

TF #	PROJECT NAME	PROJECT AMOUNT	2004 EXPENDITURES *	BALANCE	2004 ACRES **
Act 81 of 2001					
00-240	Trail Acquisition Lump Sum	350,000	177,155	0	106.89
00-252	State Parks & Recreation Lump Sum	700,000	4,097	0	
00-255	Wildlife Lump Sum	950,000	1,986	1,791	
00-401	MNRTF Board Small Acquisition Grants Initiative	350,000	104,936	191,818	106.54
		2,350,000	288,174	193,609	213.43
Act 120 of 2001					
01-205	Mackinac Island State Park Land Acquisition	500,000	92,412	83	.22
		500,000	92,412	83	.22
Act 173 of 2004					
02-181	Alpena-Hawks Rogers City Trail Acquisition	850,000	68,290	0	
		850,000	68,290	0	0
Act 309 of 2004					
03-198	Wildlife Lump Sum	450,000	3,223	446,777	
03-199	Upper Peninsula Deer Habitat Acquisition	1,500,000	301	1,499,699	
03-209	CMS Arcadia/Green Point Dunes	4,000,000	18,265	3,981,735	
		5,950,000	21,789	5,928,211	0
Total Expenditures and Acres		\$ 21,650,000	\$ 500,462	\$ 10,620,186	213.65

* Includes employee charges associated with acquisition closing.

** No acres for Trail related projects since acquisition is in linear feet or miles

PROJECT EXPENDITURES FOR 2004

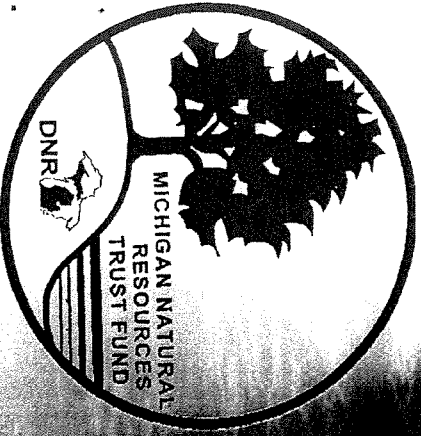
STATE DEVELOPMENT

		PROJECT	2004	
TF #	PROJECT NAME	AMOUNT	EXPENDITURES	BALANCE
Act 506 of 2000				
00-250	Fishing Piers in So. Michigan State Parks	456,500	135,722	52,109
00-251	Pontiac Lake RA Shooting Range Upgrade	250,000	180,630	0
		706,500	316,352	52,109
Act 81 of 2001				
00-242	Hersey-Evart Trail Surfacing	350,000	10,178	23,460
		350,000	10,178	23,460
Act 120 of 2001				
01-204	State Forest Campground Access Improvement	500,000	6,020	41,265
01-213	Southern Michigan Fishing Piers	330,000	302,152	23,675
		830,000	308,172	64,940
Act 173 of 2003				
02-197	Rifle River Recreation Area	300,000	22,209	277,181
		300,000	22,209	277,181
Total Expenditures		\$ 2,186,500	\$ 656,911	\$ 418,291

Michigan Natural Resources Trust Fund

*Funding Strategic Projects by the Issuance of
Bonds Secured by Oil and Gas Lease
Revenues*

**Prepared for Commissioner Steve Arwood
By: Dykema Gossett
June 10, 2004**



Background of the Natural Resources Trust Fund and Its Board

- The Fund is Created by Article IX, Section 35 of the Michigan Constitution.
- The Michigan Natural Resources Trust Fund Board is created pursuant to Section 1905 of Act 451 of 1994.
- The Fund receives rentals, delayed rentals, royalties and bonuses from leases for the extraction of nonrenewable resources from state owned lands (the “Lease Revenues”).

The Natural Resources Trust Fund,

Continued

- Monies in the Fund may be used for the following purposes:
 - The acquisition of land or rights in land for recreational uses or protection of land;
 - The development of public recreation facilities; or
 - The administration of the Fund, including payment in lieu of taxes on state owned land purchased through the Fund.

Use of Lease Revenues

- Until the Fund reaches an accumulated principal balance of \$500 million, the lesser of \$10 million or 50% of each year's Lease Revenues are transferred to the state park endowment fund.
- Until the Fund reaches an accumulated principal balance of \$500 million, one-third (1/3) of the Lease Revenues received in any one year may be expended in subsequent state fiscal years.

Use of Revenues, Continued

- Interest and earnings on the Fund in any one year can be expended in subsequent state fiscal years.
- Not less than 25% of the total amount available from any state fiscal year may be used for land acquisition; not more than 25% may be used for development of public recreation facilities.

Impact of the Trust Fund

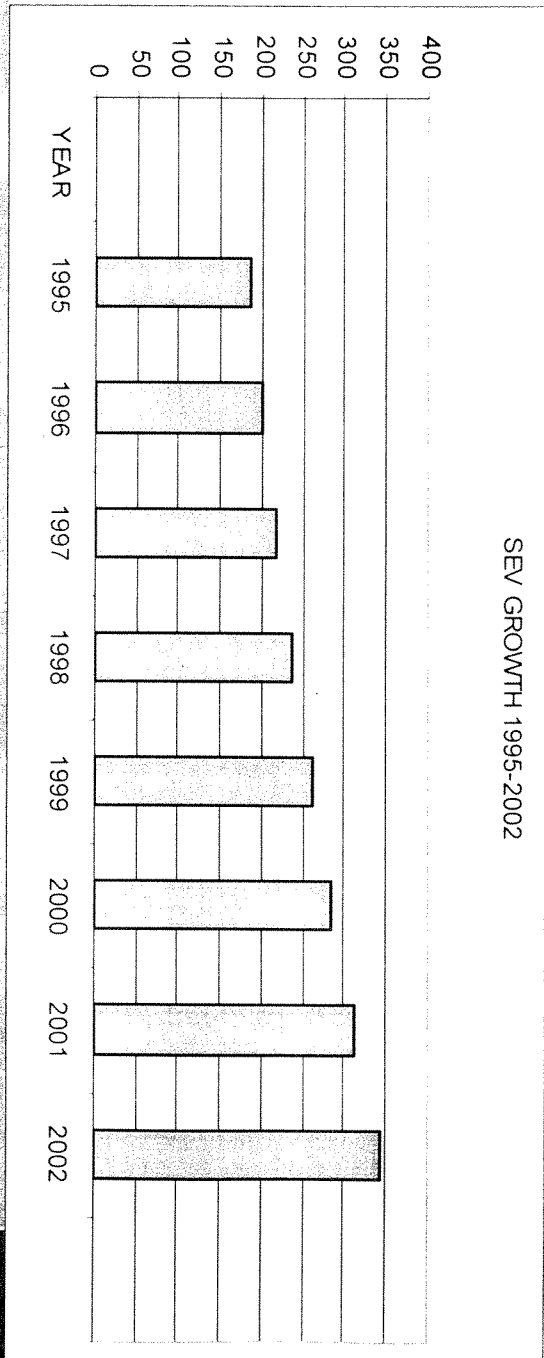
- Since inception, approximately \$600 million in local and state acquisition and development has occurred
- Over 1,200 local and state recreation projects have been assisted.
- All types of outdoor recreation, conservation, and environmental projects have been assisted.

Pressures on the Fund

- Rapidly rising land and project costs.
- Growth in payment in lieu of taxes (state purchases).
- Program management overhead
- “Static” fund growth
- Old mechanics of the fund leave little flexibility
- Knowledge that prime projects will only increase rapidly in cost if we do not act.
- \$100 million \pm yearly demand.

STATEWIDE SEV GROWTH 2002 LAST AVAILABLE DATA
(IN MILLIONS)

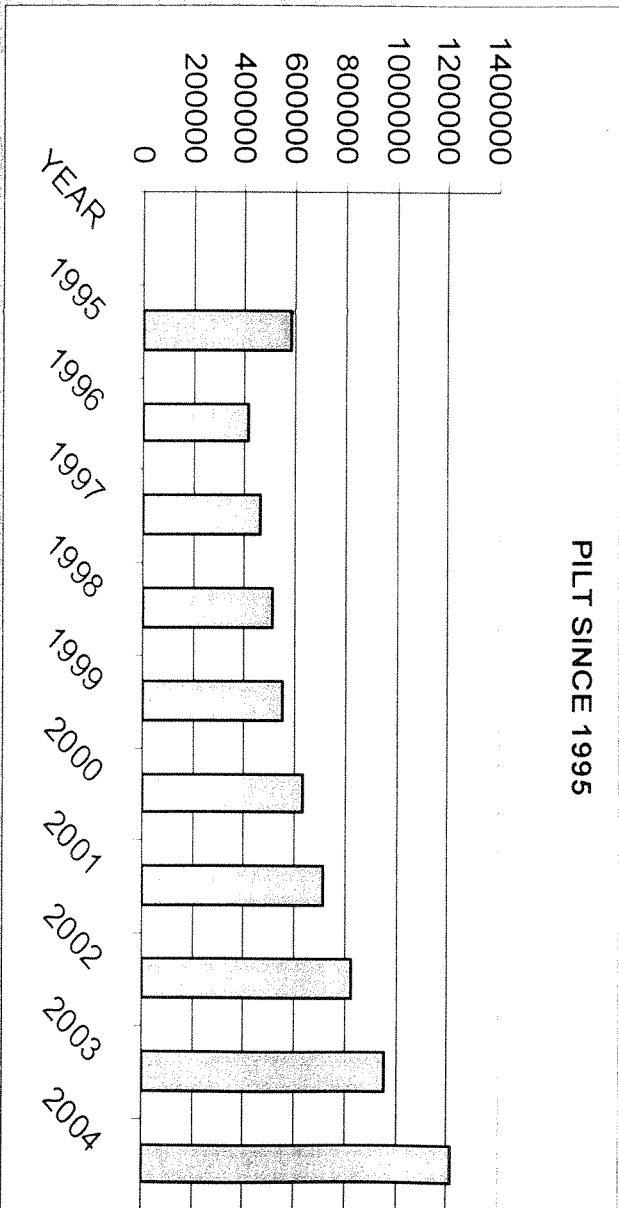
YEAR	BILLIONS	GROWTH
1995	\$186	7.00%
1996	\$200	7.83%
1997	\$217	8.44%
1998	\$237	9.20%
1999	\$261	8.10%
2000	\$284	8.97%
2001	\$312	9.04%
2002	\$343	8.37%
TOTAL		



PAYMENT IN LIEU OF TAXES (PILT)
(MNRTF SHARE)

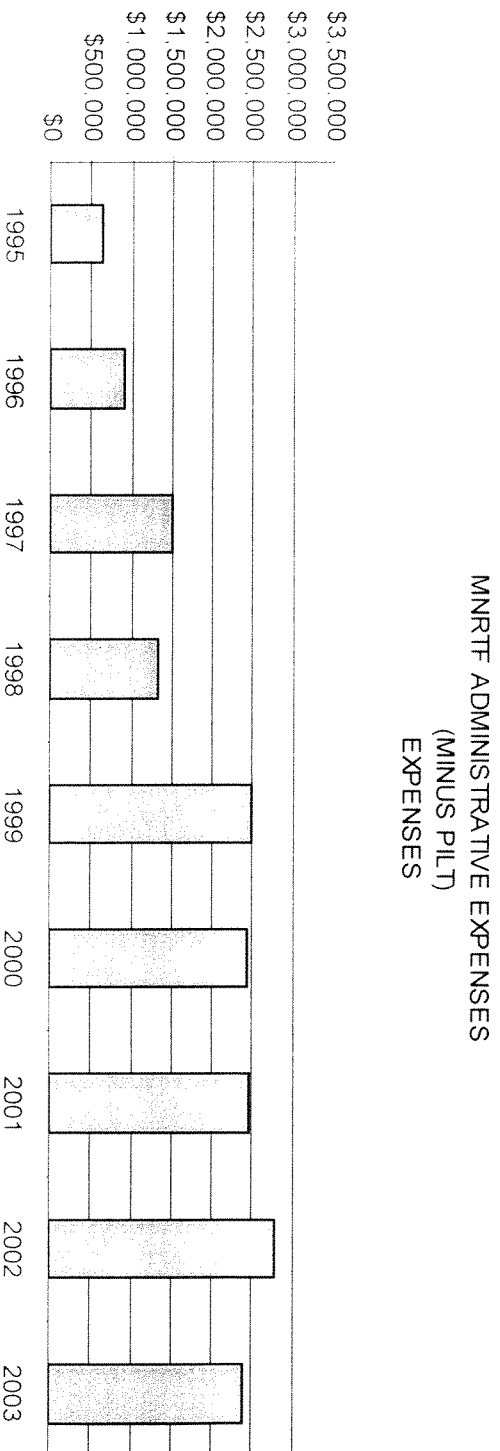
YEAR	PAYMENT	YEARLY GROWTH
1995	\$586,000	
1996	\$410,000	-30.00%
1997	\$458,000	10.48%
1998	\$513,000	10.72%
1999	\$549,000	6.56%
2000	\$630,000	12.86%
2001	\$710,000	11.27%
2002	\$828,000	14.25%
2003	\$958,000	13.57%
2004	\$1,214,000	21.09%
TOTAL	\$6,856,000	7.87%

2004 is estimated



MNRTF ADMINISTRATIVE EXPENSES
(MINUS PILT)

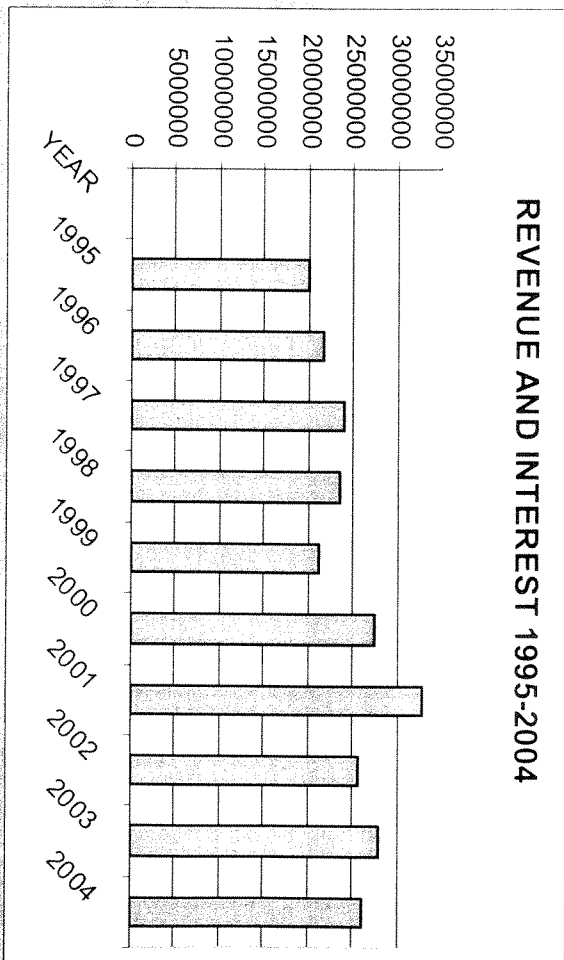
YEAR	EXPENSES	YEARLY GROWTH
1995	\$647,517	
1996	\$922,540 29.82%	
1997	\$1,515,777	39.13%
1998	\$1,335,726	-13.48%
1999	\$2,492,235	46.40%
2000	\$2,435,676	-2.32%
2001	\$2,464,330	1.16%
2002	\$2,778,792	11.32%
2003	\$2,389,175	-16.31%
2004	\$2,962,000	19.34%
2004 is estimated		
TOTAL	\$19,943,868	12.78%



REVENUE AND INTEREST

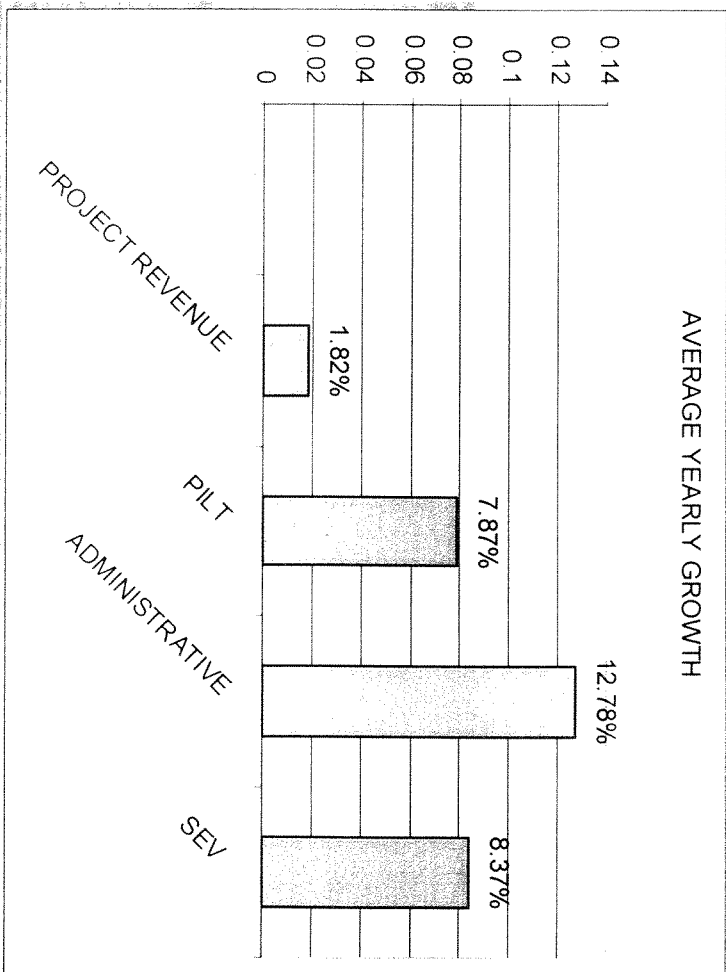
YEAR	FUNDS	GROWTH
1995	20,117,000	
1996	21,694,000	7.27%
1997	24,032,000	9.73%
1998	23,647,000	-1.63%
1999	21,141,000	-11.85%
2000	27,613,000	23.44%
2001	32,935,000	16.16%
2002	25,636,000	-28.47%
2003	27,997,000	8.43%
2004	26,247,000	-6.67%
TOTAL	251,059,000	1.82% AVERAGE

2004 is estimated

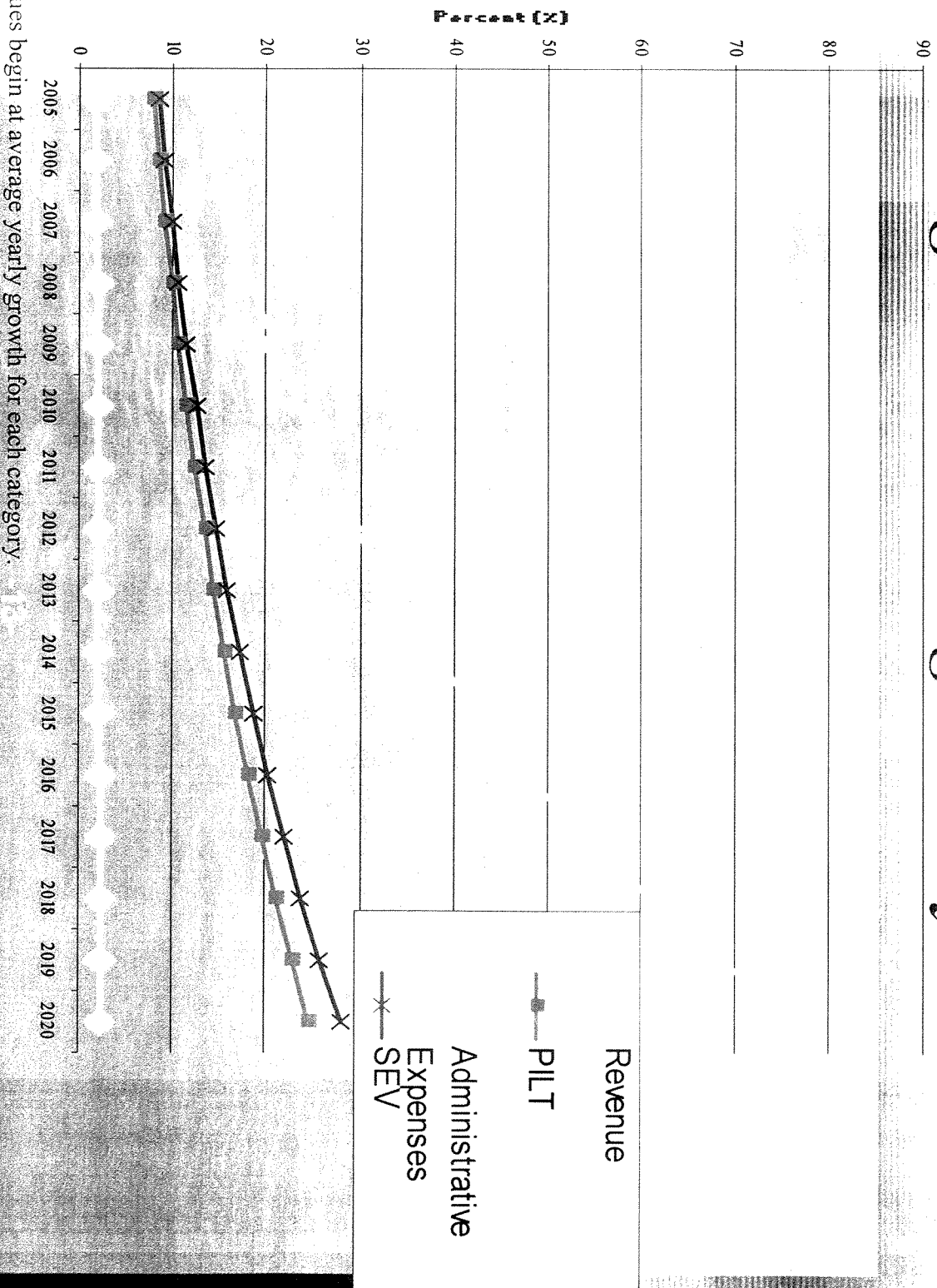


AVERAGE YEARLY GROWTH OF ALL CATEGORIES SINCE 1995

CATEGORY	AVERAGE YEARLY GROWTH
PROJECT REVENUE	1.82%
PILT	7.87%
ADMINISTRATIVE	12.78%
SEV	8.37%



Long Term Average Yearly Growth



* Values begin at average yearly growth for each category.

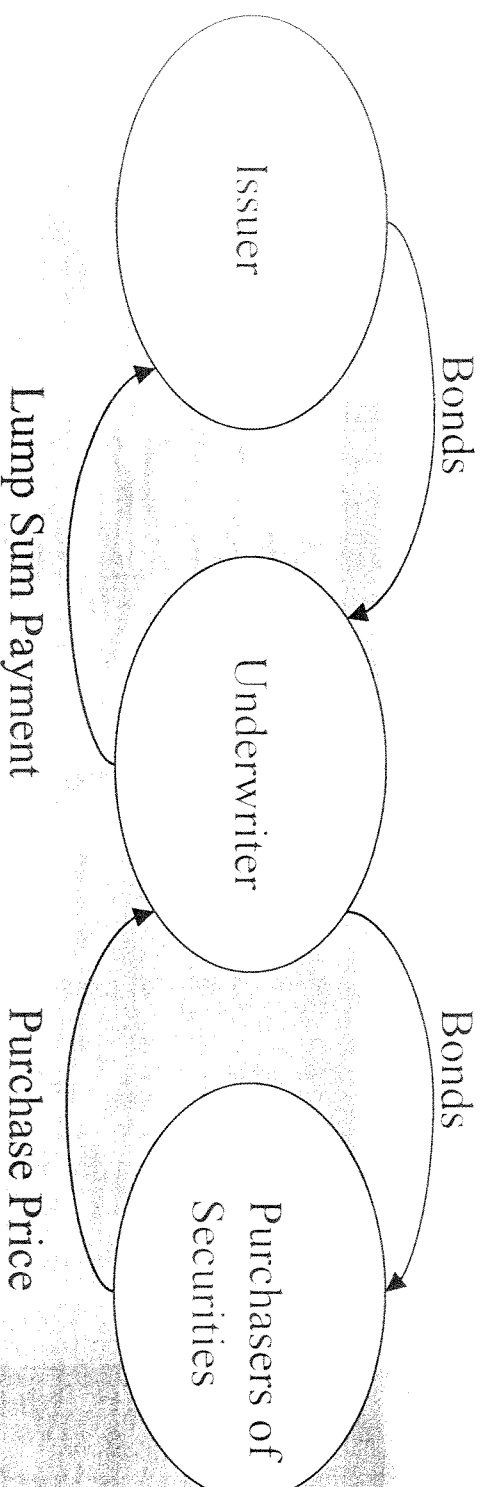
Ideal Scenario

- Flexible financing of strategic projects at more favorable economic terms.
- Take advantage of current markets and acquisition/development costs.
- Finance over time, not one-time.

Revenue Bonds

By issuing bonds, the Fund can raise a significant amount of money now that can be used for strategic projects at today's prices.

General Overview of a Tax Exempt State Authority Bond Transaction



Mechanics of the Bond Issue

- Bonds would be debt of the Fund, not the State of Michigan. (General obligation state debt would need to be authorized by a vote of the electors.)
- A portion of the Fund revenues would be pledged as security for the Bonds.
- The size of the bond issue would depend on the amount of debt service coverage that would be provided by the revenues.

Issuance of Bonds will result in the following benefits:

- Receipt of a lump sum payment upon sale of the bonds;
- Budgetary certainty; and
- Ability to flexibly finance strategic projects at today's prices.

Legislative Requirements

There is currently no statutory authority for the Board to issue bonds. Legislative action would be required to amend Act 451 to allow the Board to issue bonds.

Other Similar Bond Structures

- This proposed issuance of bonds is similar to the bond issuance structure used by the Michigan Underground Storage Tank Financial Assurance Authority (MUSTFAA).
- MUSTFAA issued bonds secured by fees collected on refined petroleum products sold in the State.

Other Similar Bond Issues, Continued

- The bond proceeds were used to finance the cost of remediation of property resulting from leaking underground storage tanks.
- The bonds were secured by the stream of revenue received from the fees.



Conclusion

- Issuance of bonds is a safe and time -tested method of government finance.
- Allows Board needed flexibility.
- Helps us meet the growing challenge of providing assistance to local committees and the people of Michigan as places to recreate, and places worth conserving, become ever more difficult to finance.